Supreme Court, U.S.
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No. 95-625

In The

Supreme Court of the United States

October Term, 1995

IN RE HOLYWELL CORPORATION and
THEODORE B. GOULD,

Petitioners.

Petition For Writ Of Mandamus To The United States Court Of Appeals For The Eleventh Circuit And To The United States District Court For The Southern District Of Florida, Senior District Judge Sidney M. Aronovitz

RESPONDENT SMITH'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

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26 pp

QUESTION PRESENTED

Whether mandamus is available to circumvent the appellate process to review adverse findings of fact and conclusions of law where there is no legal or factual basis to support Petitioners' arguments?

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APPLICABLE COURT OPINIONS

The relevant decisions are this Court's ruling in *Holywell Corp. v. Smith*, 503 U.S. 47 (1992), Pet. App. 1, and the remand decisions therefrom: that of the court of appeals, reported at 965 F.2d 994 (11th Cir. 1992), Pet. App. 3, and that of the district court, which is unreported. Resp. Smith's App. 1. Also relevant is the unreported decision of the bankruptcy court on remand, *Holywell Corp. v. Smith*, No. 87-0627 slip op. (Bankr. S.D. Fla. September 30, 1993), Pet. App. 17, and the district court's affirmance, which is also unreported. Petitioner's App. 41.

JURISDICTIONAL BASIS FOR REVIEW

Although Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1651(a), there is no recognized basis for granting the petition for writ of mandamus. "The issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised." S.Ct.R. 20.1. Petitioners have entirely failed to show that granting the writ will in any way "aid the Court's appellate jurisdiction," or that "there are present exceptional circumstances warranting the exercise of the Court's discretionary powers," or that "relief cannot be obtained in any other form or from any other court." *Id.*

For these reasons, as explained more fully hereafter, the writ should be denied.

STATEMENT OF THE CASE

Nature of the Case

Petitioners have bypassed the court of appeals and seek a writ of mandamus to vacate the bankruptcy court's Final Judgment and Findings of Fact and Conclusions of Law, affirmed by the district court. The judgment was against Petitioners on their claims against Respondent Fred Stanton Smith, individually and as Trustee of the Miami Center Liquidating Trust ("Smith"), and Respondent The Bank of New York ("Bank"). The orders appealed from include the denial of Petitioners' motions to assert RICO claims, to name additional parties, and to separate (in effect, to continue) the trial on their claims. Petitioners further seek review of the denial of their motion to compel the modification of a previously approved settlement agreement between Smith and the United States of America, a defendant in the proceedings below, regarding the tax obligations of the Miami Center Liquidating Trust.

History of the Proceedings and Facts

Petitioners were the developers of the Miami Center, a hotel, office building, shopping arcade and parking garage in Miami, Florida. Respondent Bank was the construction lender. Following Petitioners' default on the loans, the Bank initiated foreclosure proceedings. In August, 1984, Petitioners filed simultaneous voluntary petitions under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for

the Southern District of Florida.[1] Petitioners, together with their co-debtors and the Bank filed competing plans of reorganization. The bankruptcy court confirmed the Bank's proposed plan, which had been "overwhelmingly" approved by creditors. *Miami Center*, 838 F.2d at 1548-49. The primary features of the confirmed plan were:

* substantive consolidation of the five debtors' estates;
* creation of the Miami Center Liquidating Trust ("Trust"), consisting of all of the consolidated assets of the debtors, as defined by Bankruptcy Code § 541(a), 11 U.S.C. § 541(a);
* appointment of a trustee to administer the trust;
* sale of the Miami Center to the Bank for $255.6 million;
* subordination of the inter-debtor claims and those of the debtors' affiliates.

Id.

The Bank's plan failed to disclose or make any provision for the tax consequences of the reorganization scheme. *Smith v. Bank of New York*, 161 B.R. 302 (Bankr. S.D. Fla. 1993). In July, 1985, prior to confirmation, and prior to Respondent Smith's appointment as Trustee of

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[1] In addition to Petitioner Gould, the sole shareholder, officer and director of Petitioner Holywell Corp., three other entities "owned, controlled and dominated" by Gould filed bankruptcy petitions at the same time: Miami Center Limited Partnership, Miami Center Corp., and Chopin Associates. *See Miami Center Limited Partnership v. Bank of New York*, 838 F.2d 1547, 1548 (11th Cir.), *cert. denied*, 488 U.S. 823 (1988).

the Miami Center Liquidating Trust, the bankruptcy court invited Petitioners to present evidence of any claimed adverse tax consequences and offered to consider modification of the plan if such proof were submitted. Pet. App. 8, n.4. There was no response.

Respondent Smith was appointed Trustee shortly after confirmation. Prior to that time he was a stranger to the proceedings.

Petitioners' appeal of the plan of reorganization was unsuccessful. *Miami Center*, 838 F.2d 1547 (11th Cir.), *cert. denied*, 488 U.S. 283 (1988).[2] After Petitioners failed to stay implementation of the plan, Respondent Smith consummated it on October 10, 1985 by the sale of the Miami Center to the Bank's nominee. The $255.6 million purchase price was paid by cancellation of the Bank's $242

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[2] Contrary to the assertion in the Petition at 4, n.2, the confirmation order has not been reversed. Petitioners misleadingly rely on the court of appeals' decision in *Olympia & York Fla. Equity Corp. v. Smith*, 913 F.2d 873 (11th Cir. 1990) to support that statement. A plain reading of that decision and the court of appeals' dismissal of their appeal of the confirmation order, reported at 838 F.2d 1547, reveals Petitioners' error. In the case reported at 913 F.2d 873, one of Petitioners' creditors separately appealed the plan's treatment of its claim. The Bank posted a bond so that the plan could be implemented without delay and in order that the creditors' claim would be provided for in the event of a reversal. The court of appeals ultimately reversed the plan's treatment of that creditor's claim, but not of the entire confirmation order. In the case reported at 838 F.2d 1547, the issues involving the other creditor's appeal of the confirmation order were specifically excluded, and the court of appeals dismissed the debtors' appeal of the plan of reorganization on the ground that it was moot.

million mortgage lien, and payment of the balance in cash, subject to closing adjustments.

Respondent Smith did not establish a reserve for income taxes on the pre-confirmation sale of the Washington properties or on the post-confirmation sale of the Miami Center, as no tax consequences were expressly imposed on the Trust under the plan.[3]

At the closing on the sale of the Miami Center, Respondent Smith demanded and received an agreement in which the Bank agreed to indemnify Smith "for any claims against said Liquidating Trustee, as a result of execution of the Contract [for the sale of the Miami Center] in the manner set forth in the above-quoted provisions or any of the provisions of the plan."[4] The bankruptcy court held, and the district court affirmed, that "this language was for the purpose of holding the Trustee harmless from all of the effects of consummation of the plan, including any tax consequences."[5] Respondent Smith testified at trial that he intended the language to be as broad as possible since he had not previously been a party to the case and thus had no idea of what any of the potential consequences of the plan would be.[6]

After the sale of the Miami Center, Petitioners and their accountant repeatedly advised Respondent Smith in

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[3] Pet. App. 8-9.

[4] *Id.*

[5] Pet. App. 20.

[6] *Id.*

writing that Petitioners and their co-debtors were responsible for any taxes that might be owed.[7] Also in 1986, Smith's then counsel advised that the Trust had no tax liability. Pet. App. 24.

In mid-1987, Petitioners changed position and claimed that Respondent Smith was responsible for the tax consequences of the plan of reorganization.[8] The Internal Revenue Service also made inquiry. As a result, Respondent Smith filed an adversary proceeding in the bankruptcy court seeking a declaration of the tax obligations of the Trust and, if payment was required, a determination of the Bank's responsibility therefor. Respondent Smith named as defendants the United States of America, Petitioners and their co-debtors, and the Bank. No counter- or cross-claims were filed. The lower courts all ruled that the Trust was not responsible for the tax consequences of the plan of reorganization. *See Smith v. United States*, 85 B.R. 898 (Bankr. S.D. Fla. 1988), *aff'd*, No. 88-0795 slip op. (S.D. Fla. July 30, 1989), *aff'd*, 911 F.2d 1539 (11th Cir. 1990). This Court reversed, holding that Respondent Smith, as Trustee, was responsible for filing the tax returns and paying any taxes owed in accordance with 26 U.S.C. § 6012(b)(3, 4), regardless of the failure of the plan to make provision for such taxes. *See Holywell Corp. v. Smith*, 503 U.S. 47 (1992).

Following this Court's decision and the issuance of the mandate from the court of appeals, Petitioners unsuccessfully attempted to preclude the district court from

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[7] Pet. App. 21.

[8] *Id.*

remanding the case to the bankruptcy court for further proceedings, arguing that the bankruptcy court lacked jurisdiction. The district court rejected that argument and remanded the case to the bankruptcy court.

Upon remand, Respondent Smith, as Trustee, filed an amended adversary complaint to determine the amount and priority of the tax obligations and to determine the Bank's liability for the taxes found to be owing. Even though no affirmative relief was sought against Petitioners, and despite the jurisdictional objections they had previously made, Petitioners filed counterclaims against Mr. Smith, both *individually* and as Trustee, for breach of fiduciary duty, gross negligence, and conspiracy to injure another in a trade, practice or profession. Petitioners also filed cross-claims against the Bank for negligent misrepresentation, fraud in connection with a case under Title 11, and conspiracy to injure another in a trade, practice or profession.

Petitioners alleged that Respondent Smith engaged in actionable conduct as to them by not having previously filed tax returns or paid taxes. They also asserted that Smith breached alleged duties to seek modification of the confirmed plan (1) to preclude the Bank from receiving post-petition interest on its claim, (2) to require the repayment of alleged superpriority loans (in reality inter-debtor and affiliate loans), (3) to recover an alleged overpayment of interest due the Bank under its mortgage claim, and (4) to require payment of the subordinated claims of two of Petitioners' affiliates. Each of these claims had been raised and expressly rejected prior to the filing of Petitioners' counterclaims: (1) *Holywell v. Smith*, No. 88-151 slip op. (S.D. Fla. July 21, 1988), (2) *Bank of*

New York v. Holywell, No. 87-970 (S.D. Fla. November 4, 1988), (3) *Bank of New York v. Gould*, No. 85-0160 slip op. (Bankr. S.D. Fla. March 21, 1985) (Judgment Determining Amount, Validity, and Extent of Liens of Bank of New York), and (4) *Holywell Telecommunications Co. v. City Nat'l Bank*, No. 87-1786 slip op. (S.D. Fla. February 28, 1989) and *Holywell Leasing Co. v. Bank of New York*, No. 85-3431 slip op. (S.D. Fla. May 24, 1989).

In addition to the above dismissals, Petitioners had already sued Smith a number of times regarding his handling of the tax issues. They unsuccessfully sued him for failing to establish reserves for taxes. *See In re Holywell Corp.*, 93 B.R. 780 (S.D. Fla. 1988). Petitioners caused four of Holywell Corporation's wholly-owned subsidiaries to file identical suits against Smith and the Bank in Virginia for his handling of the tax issues, all of which were involuntarily dismissed. *See, e.g., Twin Development Corp. v. Smith*, No. 87-0037C slip op. (W.D. Va. November 15, 1988). In 1989, Petitioners sought to require Smith to segregate and account for Trust assets allegedly belonging to the individual debtors or their affiliates and to pay their tax liabilities. *In re Holywell Corp.*, No. 84-01590, bankruptcy court paper nos. 1950, 1951 and 1954. The motions were denied. *In re Holywell Corp.*, No. 84-01590, bankruptcy court paper nos. 1963-65. They also sought the Trustee's discharge after this Court's tax decision. *In re Holywell Corp.*, No. 84-01590, bankruptcy court paper no. 2331. That motion was not pursued.

Respondent's amended complaint on remand and Petitioners' counter- and cross-claims were scheduled for trial on June 21, 1993. Four days before the trial date, Petitioners filed a motion for leave to amend their answer

and to supplement their counter- and cross-claims to include counts for RICO violations and to name nine third-party defendants, including Arthur Anderson & Co., the Trust's accountant, and one of its partners. The motion was heard the day of trial and was denied. On the day of trial, Petitioners filed a motion for a separate trial, in effect asking for a continuance, on the ground that the matter was too complex for Petitioner Gould to represent himself or for attorney Robert Musselman to represent Holywell Corporation. They told the bankruptcy court that if Smith prevailed on his claims against the Bank, their counterclaims against Smith would be moot. The motion was denied.

On the eve of trial, Smith and the federal government reached a settlement of the amount and priority of the tax obligations of the Trust. The case thus proceeded to trial only on Smith's claims against the Bank and Petitioners' counter- and cross-claims. Smith obtained a judgment on liability against the Bank, and judgment was entered in favor of Smith and the Bank on Petitioners' claims. The bankruptcy court found,

> The undisputed facts offered at trial show that the Trustee acted properly. The bank proposed and the court confirmed a plan which failed to address income tax consequences of the plan. The debtors failed to present evidence of the potential tax liabilities of the plan at confirmation. The Trustee's authority to act had not yet begun. Thereafter, the debtors and their accountants led the Trustee to believe they would file tax returns and pay taxes. Even the Trustee's then counsel advised that the Trust had no tax responsibilities. Upon learning that claims were

> being asserted that the Trust was responsible . . . , the Trustee promptly initiated this adversary proceeding to determine the liability of the Trust. Indeed, three courts considered the question and concluded that the Trustee was not responsible. . . . Once the Supreme Court held that the Trust did have this obligation, the Trustee promptly amended his complaint to seek a determination of the amount and to impose the obligation to pay the tax upon the Bank. In addition, he actively negotiated a compromise with each of the taxing authorities on terms favorable to the Trust and ensured the amounts were within the ability of the Trust to pay. Finally, the Trustee obtained a ruling of this court holding the bank liable for having proposed a plan without regard or provision for the payment of such taxes.

Id.

Based upon these findings, the bankruptcy court held that Petitioners did not prove any breach of fiduciary duty or gross negligence. The court held, "This conduct reflects a high degree of care and a proper and reasonable response to a highly unusual and difficult problem." Pet. App. 25.

The bankruptcy court also concluded that Petitioners failed to demonstrate the existence of any conspiracy. The only evidence offered by Petitioners was the indemnity agreement between Smith and the Bank. The bankruptcy court held,

> By itself, it is not sufficient to prove an agreement to either accomplish an unlawful purpose or accomplish some purpose not in itself unlawful but by unlawful means. It is the debtors'

> view that this agreement was demanded by the Trustee as part of a plot to implement the reorganization and thereby evade his duty to pay taxes with impunity. The unrefuted testimony, however, is that the Trustee demanded an indemnity agreement because, unlike the debtors or the bank, he was in no position to investigate or know the consequences of implementing the plan. He was not a party to any of the proceedings prior to confirmation. . . . The evidence is clear that under the agreement, the Trustee was to be indemnified for *any* consequence, and not just the payment of taxes.

Pet. App. 27-28.

In addition, the bankruptcy court held that Petitioners' claims were barred by the result of earlier adverse rulings, as well as their own contributory negligence in "creat[ing] and perpetuat[ing] the view that the Trust had no tax obligations." Pet. App. 28-29. The court held that Smith had the right to and did reasonably rely on his former counsel's advice that he had no tax filing and payment obligations, Pet. App. 31, and on the court decisions which reached the same conclusion. *Id.* The counterclaims were also dismissed pursuant to the doctrine of derived judicial immunity, and because of the finding that Petitioners were guilty of inequitable conduct. Pet. App. 31-32. Petitioners' claims against the Trustee were largely mooted in light of the court's ruling in favor of Smith on his claims against the Bank as the proponent of the flawed plan. Lastly, the court held that Petitioner Holywell Corporation's failure to appear at

trial warranted dismissal of its counterclaims.[9] Pet. App. at 39.

As previously noted, Respondent and the federal government amicably settled the outstanding taxes. Pet. App. 34-35. Petitioners objected, not to the amount ($13.3 million, in lieu of the $55 million plus originally asserted by the IRS), but to one of the conditions. They failed to substantiate their objection with competent evidence and the objection was overruled. *Id.*

The district court affirmed the judgment, and this petition followed.

REASONS FOR DENYING THE WRIT

I.

MANDAMUS SHOULD BE DENIED BECAUSE PETITIONERS HAVE NOT DEMONSTRATED THAT THE ORDINARY APPELLATE PROCESS IS IN ANY WAY INADEQUATE

A. An Appeal In The Ordinary Course Is The Appropriate Remedy

"The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943).

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[9] Attorney Musselman, who represents Petitioner Holywell herein, simply failed to appear at trial without explanation.

Mandamus is an extraordinary remedy. Petitioners here have failed to show that they lack an adequate alternative means to obtain relief. It is their burden to show a "clear and indisputable" right to the writ, and they have not done so. *See Mallard v. U.S. District Court for the S. District of Iowa*, 490 U.S. 296, 309 (1989). They have not demonstrated that the lower courts "clearly abused" their discretion. *Id., citing Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953). Indeed, they have not shown any abuse of discretion whatever. Petitioners simply disagree with the bankruptcy court's findings of fact, all of which are supported by the record, and the conclusions of law which flow therefrom. Accordingly, the writ should be denied.

1. The Bankruptcy Court Had Jurisdiction To Adjudicate Petitioners' Counterclaim

After more than 10 years of litigation, Petitioners persist in contesting the bankruptcy court's jurisdiction to adjudicate claims regarding Respondent Smith's administrative duties. Contrary to Petitioners' arguments, there is no question of the bankruptcy court's jurisdiction over their counterclaim.

Petitioners' position is especially curious in light of the fact that they voluntarily filed the counterclaim, thereby submitting the matter to the bankruptcy court for adjudication, even though Smith sought no affirmative relief against them in the amended complaint on remand.

Moreover, Petitioners have waived any right to contest jurisdiction by specifically admitting in their pleadings that the bankruptcy court had jurisdiction.[10] The confirmed plan of reorganization specifically grants the bankruptcy court jurisdiction to enter any order necessary or appropriate to the administration of the plan of reorganization. Respondent's Trial Exhibit 3, Plan, Art. XIV.

Petitioners were not legally compelled to assert their claims in that proceeding, as the counterclaims were not compulsory. *See* F.R.Civ.P. 13(a). In order to be compulsory, a counterclaim must have "arise[n] out of the transaction or occurrence that is the subject matter *of the opposing party's claim.*" *Id.* (emphasis supplied). Since Respondent Smith sought no affirmative relief against Petitioners, merely naming them as interested parties to the remanded proceedings, no counterclaim was required to have been filed. Accordingly, Petitioners request that the bankruptcy court accept jurisdiction binds them.

"Jurisdiction must clearly be lacking to justify issuance of an [extraordinary] writ." *Winter v. ICC*, 851 F.2d 1056 (8th Cir.), *cert. denied*, 488 U.S. 925 (1988). As Petitioners have not met their burden, the writ should be denied.

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[10] Petitioners admitted in their answer at ¶ 1, to the amended complaint that the "Court does have post-confirmation jurisdiction to exercise supervisory control over the Trustee as an officer of the Court." Petitioners also alleged in their counterclaim at ¶ 57, that the bankruptcy court had the requisite jurisdiction.

2. Mandamus Is Not Available To Review Legal Conclusions Supported By The Record

The bankruptcy court concluded, after hearing all of the evidence, that Petitioners failed to prove gross negligence, breach of fiduciary duty, or conspiracy. While Petitioners place great emphasis on the "evidence" they presented at trial in attempting to prove their right to issuance of the writ, they ignore the record evidence that supports the lower court's findings of fact and conclusions of law. It is not customary for this Court to review the sufficiency of evidence. *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, ___ U.S. ___, 113 S.Ct. 2578, 2591, 125 L.Ed.2d 168 (1993). Whether the bankruptcy court's findings of fact are "clearly erroneous," or its conclusions of law are in error in any way (the proper standards of review), it is well within the parameters of the court of appeals' power of review. *See* Bankr.R. 8015; *In re St. Laurent*, 991 F.2d 672, 675 (11th Cir. 1993); *Birmingham Trust Nat'l Bank v. Case*, 755 F.2d 1474 (11th Cir. 1985).

Petitioners have entirely failed to demonstrate that the lower courts have so far departed from their prescribed roles that this Court's intervention is required. The writ should be denied.

3. Petitioners Have Not Demonstrated That The Bankruptcy Court Abused Its Discretion In Denying Petitioners' Last Minute Pre-Trial Motions

Motions which would have dramatically affected the scheduled trial, such as those proposed by Petitioners,

were properly denied when filed only four days before trial, or in the case of one of the motions, on the day of trial. No legally cognizable reason exists for issuance of a writ to review those denials.

Petitioners sought to add nine new party-defendants, including the Trustee's accounting firm and one of its partners, and to add new counts against Respondent Smith for alleged RICO violations. Notably, Petitioners did not file a timely written motion for a continuance, nor did they suggest how the parties could be expected to defend the new claims with no notice. Only on the day of trial did they move for a continuance in the guise of a motion for a separate trial. Petitioners' effort to amend their counterclaim was not based on newly discovered facts or changes in the law. Rather, they belatedly thought up additional legal theories, as meritless as those in the original counterclaim. Given these facts, there is no cognizable basis for issuance of a writ to review the bankruptcy court's rulings.

4. Petitioners Are Estopped From Arguing That Trust Monies Could Not Be Used To Pay The Tax Obligations Of The Trust

Petitioners are estopped from arguing that the assets of the Trust are not available to pay the tax obligations resulting from this Court's decision in *Holywell Corp. v. Smith*, 503 U.S. 47. In that appeal, Petitioners Gould and Holywell Corporation, along with their co-debtors, argued: "As we demonstrate below, the statute [26 U.S.C. § 6012(b)(3, 4)] requires resort to the trust fund." Application for Stay, United States Supreme Court No. A-546 at 3.

See also Pet. App. 35. A plain reading of the *Holywell* decision reveals that the Court agreed. Petitioners now argue that the Trust should not have paid the taxes because Respondent Smith is personally liable for this obligation. Not surprisingly, neither the taxing authorities nor the lower courts agreed.[11] Principles of estoppel bar Petitioners' argument. *See* Pet. App. 56. *See also, e.g., Holywell Corp. v. Bank of New York*, No. 86-0848 slip op. (S.D. Fla. February 20, 1987) (estoppel applied to preclude debtors from arguing against inclusion of assets in Bank's plan that they had included in their proposed plans of reorganization).

Accordingly, the bankruptcy court did not err in denying Petitioners' motion to prevent the use of Trust monies to pay the tax obligations imposed by the court in

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[11] The statute on which Petitioners rely to support their claim of personal liability is, by its own language, inapplicable to "a case under Title 11." 31 U.S.C. § 3713(a)(2). Further, that statute only speaks of a liability owed to the *government*, and not to a private litigant. 31 U.S.C. § 3713(b). Thus, Petitioners have no standing to claim damages thereunder. In addition, Petitioners argue without record support that the bulk of Trust assets are traceable to Petitioner Gould's estate, and therefore those assets could not be used by the Trust to pay the tax obligations related to Petitioner Holywell and its subsidiaries. Holywell is, of course, "owned, controlled and dominated" by Gould. *Miami Center*, 838 F.2d at 1548. In the absence of supporting evidence, the bankruptcy court properly rejected the argument. Moreover, Petitioners entirely ignore the substantive consolidation provision of the plan, which consolidated all of the assets and liabilities of all of the debtors. Thus, even if Petitioners' assumption is correct, Gould's assets would still be available to pay claims against Holywell.

Holywell Corp. v. Smith, 503 U.S. 47 (1992). No writ need be issued to review this ruling.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Mandamus should be denied.

Respectfully submitted,

Respondent Fred Stanton Smith, individually and as Trustee of the Miami Center Liquidating Trust

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NOS. 88-0795-CIV-KEHOE
88-1053-CIV-KEHOE

IN RE:

HOLYWELL CORPORATION, et al.,

Debtors.

_____/

THE UNITED STATES OF AMERICA,

Appellants,

v.

FRED STANTON SMITH, as Trustee of the Miami Center Liquidating Trust, et al.,

Appellees.

_____/

ORDER GRANTING TRUSTEE'S MOTION TO REMAND TO THE UNITED STATES BANKRUPTCY COURT FOR ENFORCEMENT OF MANDATE OF THE UNITED STATES SUPREME COURT

(Filed Mar. 25, 1993)

THIS CAUSE having come on to be heard before the undersigned Judge on March 18, 1993 upon motion of Fred Stanton Smith, as Trustee of the Miami Center Liquidating Trust for an order remanding this adversary proceeding to the United States Bankruptcy Court for the Southern District of Florida, in order that the mandate of the Supreme Court of the United States of America may

be carried out, and the Court having reviewed the pleadings on file and having heard of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the said motion be and the same is hereby granted. This cause is remanded to the United States Bankruptcy Court for the Southern District of Florida for the purposes of carrying out the mandate of the United States Supreme Court, and for such other proceedings as may be appropriate.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 25th day of March, 1993.

/s/ James W. Kehoe
JAMES W. KEHOE
SENIOR UNITED STATES
DISTRICT JUDGE

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